DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statements filed 5/07/2008, 9/14/2005, and 2/09/2004 have been fully considered. Initialed copies of said 1449s are enclosed herein.

Drawings

2. The drawings filed 10/22/2007 are accepted.

Specification

3. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. ***Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading***. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

(a) TITLE OF THE INVENTION.
(b) CROSS-REFERENCE TO RELATED APPLICATIONS.
(c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
(d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
(e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
(f) BACKGROUND OF THE INVENTION.
    (1) Field of the Invention.
    (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
(g) BRIEF SUMMARY OF THE INVENTION.
(h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
(i) DETAILED DESCRIPTION OF THE INVENTION.
(j) CLAIM OR CLAIMS (commencing on a separate sheet).
(k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
(l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if

the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Double Patenting

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5. Claims 1-12 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-12 of copending Application No. 11/656018. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claim 9 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A "use" claim.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-5, 7, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Robert et al (US20010053821A).

Robert teaches a co-extrusion binder comprising the following:

5 to 35 parts of a polymer (A) comprising a blend of 80 to 20 parts of a metallocene polyethylene (A1) of relative density between 0.865 and 0.915 and of 20 to 80 parts of a non-metallocene LLDPE polyethylene (A2), the blend of (A1) and (A2) being co-grafted by a co-grafting monomer said co-grafting monomer being an unsaturated carboxylic acid grafting monomer or functional acid derivative thereof, and

95 to 65 parts of (B) selected from the group consisting of at least one of an an ethylene copolymer wherein the co-monomer is an alpha-olefin such a propylene (0042, 0044). Said teaching is understood to anticipate the claimed propylene copolymer.

The blend of (A) and (B) being such that: the content of cografting monomer is between 30 and 10.sup.5 ppm, the MFI or melt flow index (ASTM D 1238 standard: 190.degree. C./2.16 kg) is between 0.1 and 10 g/10 min (claim 1). The binder is useful for binding a polyolefin layer (herein understood to be sufficiently specific to anticipate polypropylene) and a metal layer (0054). The metal may comprise aluminum, iron, copper, tine or nickel (0053).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 1-8 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stillman (US 4,085,244) in view of US2001/0053821A (Robert).

Stillman teaches laminated package comprising a metal foil, a biaxially oriented polypropylene layer, and an outer heat sealable polyolefin layer (abstract). It would have been obvious to the skilled artisan to utilize propylene-ethylene copolymers, terpolymers, or metallocene PE as the heat sealable polyolefin layer because said materials are known in the art as heat sealable compositions.

Stillman does not teach the laminate should comprise the claimed tie layer between the metal layer and the polypropylene layer. However, Robert teaches a tie layer that is useful for bonding polyolefin materials to metal layers (0054). Said tie composition comprises:

5 to 35 parts of a polymer (A) comprising a blend of 80 to 20 parts of a metallocene polyethylene (A1) of relative density between 0.865 and 0.915 and of 20 to 80 parts of a non-metallocene LLDPE polyethylene (A2), the blend of (A1) and (A2) being co-grafted by a co-grafting monomer said co-grafting monomer being an unsaturated carboxylic acid grafting monomer or functional acid derivative thereof, and

95 to 65 parts of (B) selected from the group consisting of at least one of an an ethylene copolymer wherein the co-monomer is an alpha-olefin such a propylene (0042, 0044). Said teaching is understood to anticipate the claimed propylene copolymer.

The blend of (A) and (B) being such that: the content of cografting monomer is between 30 and 10.sup.5 ppm, the MFI or melt flow index (ASTM D 1238 standard: 190.degree. C./2.16 kg) is between 0.1 and 10 g/10 min (claim 1).

It would have been obvious to the skilled artisan to utilize the tie layer taught in Robert between the metal layer and polypropylene layer taught in Stillman in order to increase adhesion between said layers.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 4419408, US 4430135, US 4472555, US 4452942 and GB 2081723 each teaches tie layers comprising polypropylene blended with graft modified polyethylene.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN R. KRUER whose telephone number is (571)272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin R Kruer/
Primary Examiner, Art Unit 1794